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Report to Congressional Requesters

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PORT DEVELOPMENT

Sponsors Have Not Used User Fee Financing to Date

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United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

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May 4, 1989

The Honorable Quentin N. Burdick, Chairman
Committee on Environment and Public Works
United States Senate

The Honorable Glenn M. Anderson, Chairman
Committee on Public Works and Transportation
House of Representatives

As you know, Section 208 of the Water Resources Development Act of 1986 allows nonfederal interests to levy port or harbor dues or user fees on shippers to recover the nonfederal share of the costs of construction, operation and maintenance, and provision of emergency response services with respect to harbor navigation improvement projects. Section 208 also provides that we audit the operations of nonfederal interests that elect to use this authority to determine their compliance with conditions imposed by the act for its use.

Results in Brief

To date, section 208 cost recovery has not been pursued by those nonfederal interests whose projects were eligible. Instead, they are using other bases for selling securities to finance their share of project costs. Until a nonfederal interest exercises this option, there will be no occasion for a GAO audit.

There are a number of possible reasons why section 208 cost recovery is not being used, including: (1) dues cannot be charged until the project or a usable segment thereof has been completed while sponsors may need upfront financing, (2) only those vessels benefitted by the particular project, rather than all vessels using the port, can be charged the dues, such as shallow-draft vessels not benefitting from a channel-deepening project, and (3) a port charging the dues may be put at a competitive disadvantage with respect to other ports not charging such dues.

Background

The Water Resources Development Act of 1986 significantly altered the historic roles of the federal government and of the states and local authorities in accomplishing port and harbor improvements and maintenance. The act requires that local interests assume a proportionately greater responsibility and share of the costs of navigation projects such as channel improvements and dredge material disposal. Section 208 provides nonfederal interests the option of levying port or harbor dues on vessels and cargo to recover their share of the project costs. Use of other methods, however, is not precluded.

Section 208(a) of the act requires that the nonfederal interest transmit to the Secretary of the Army the text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, along with provisions for their administration, collection, and enforcement. The Secretary is to have this information published in the Federal Register. On October 30, 1987, the U.S. Army Corps of Engineers, which acts for the Secretary on these matters, published a notice in the Federal Register providing guidance to nonfederal interests on the procedures to be followed for submitting the required information.

After the above proposed actions were submitted to the Secretary, the nonfederal interest is to file a schedule of port or harbor dues levied with the Federal Maritime Commission and the Secretary. The Commission, in turn, must make the schedule available for public inspection.

Subsection 208(b) of the act provides that we periodically audit the operations of nonfederal interests that elect to levy port or harbor dues under section 208 to determine if the nonfederal interests are complying with applicable conditions. We are to report our findings to the Congress. The nonfederal interest is required to provide us with any records or other evidence that we consider to be necessary for our audit.

Port Improvement Sponsors to Date Have Not Elected to Use Section 208 Dues

Corps and Maritime Commission officials responsible for implementing section 208 told us that to date, no nonfederal interest had initiated action to use the cost recovery authority provided by the act and that they are not aware of any instance in which such use is being contemplated. Corps officials told us that 25 federal harbor improvement projects had been initiated under the cost-sharing provisions of section 208 (see app. I) but the nonfederal share of applicable costs is being financed through other means. For example, Virginia is financing channel improvements at its Hampton Roads port through general revenues. According to an official at the American Association of Port Authorities, several projects are in the planning stage, but he believed section 208 authority would be considered only as a last resort and even then would likely be rejected at that point because of the conditions attached to its use. He, along with Corps and Maritime Administration officials and a port development consultant, provided the following possible reasons why port improvement sponsors to date have not elected to use section 208 authority:

- Dues can only be charged after a project or usable segment has been completed. This eliminates such dues as a basis for selling securities to provide upfront financing for development and construction costs.
- The dues cannot be charged to vessels that do not benefit from the project. Shallow-draft vessels, for example, may not benefit from a channel-deepening project. Distinguishing between those who can and cannot be charged creates administrative burdens.
- Charging dues may put a port or harbor at a competitive disadvantage. If nearby ports do not charge such dues, shippers may elect to use those ports instead.
- Nonfederal interests may be discouraged by the "red tape" involved in getting a schedule of fees through the federal process, including the publication in the Federal Register and the requirement for public hearings.
- Other, easier-to-use methods of recovering the project costs are available, precluding the need to use section 208. For example, the state may finance the project from general revenues or the port may recover the costs through other fees charged to users of the port facilities.

In addressing the issues discussed in this report, we reviewed documents and interviewed Corps of Engineer officials at Corps headquarters in Washington, D.C. We also interviewed an official at the Federal Maritime Commission headquarters in Washington, D.C. Further, we interviewed a representative of the American Association of Port Authorities and a port development consultant. Our work was conducted between November 1988 and February 1989.

At the conclusion of our review, we met with senior officials in the Corps and the Commission to verify the information included in this report. Because we held those discussions, and because this report does not address deficiencies or make recommendations, we have not obtained written comments.

We will continue to monitor activity under section 208, but until nonfederal interests begin using this financing option, we plan to issue no further reports. We are sending copies of this report to the Assistant Secretary of the Army (Civil Works) and the Federal Maritime Commission.

Contributors to this report are listed in appendix II.

Kenneth M. Mead
Director, Transportation Issues

Federal Projects Subject to the Cost-Sharing Provisions of the Water Resources Development Act of 1986

Project	Cost[a]
Norfolk Harbor, Va.	$32,348,000
Kill Van Kull, N.J.	211,925,000
Mobile Harbor, Ala.	38,200,000
Jonesport Harbor, Maine	9,020,000[b]
Baltimore Harbor, Md.	245,620,000
Tampa Harbor Bridge Channel, Fla.	19,419,000
Savannah Harbor, Ga.	15,418,000[b]
Freeport, Tex.	88,630,000
Sacramento River Ship Channel, Calif.	44,700,000
Mississippi River Ship Channel, La.	40,144,000
Delaware River, N.J.	4,765,000[c]
Ponce Harbor, P.R.	10,210,000
Portsmouth Harbor, N.H./Maine	15,320,000
Jacksonville Harbor-Mill Cove, Fla.	3,950,000
Black Warrior Tombigbee, Miss.	2,880,000
St. Paul Island, Alaska	31,664,000
Charleston Harbor, S.C.	124,943,000
Cleveland Harbor, Ohio	14,100,000[d]
Helena Harbor (MR&T), Ark.	33,200,000
Manatee Harbor, Fla.	22,330,000
Oakland Harbor (Outer & Inner), Calif.	71,840,000
Port Austin, Mich.	2,942,000[e]
Richmond Harbor, Calif.	16,950,000
Wando Extension, S.C.	6,615,000[e]
Hempstead Harbor, N.Y.	3,455,000

[a]The total of the federal and nonfederal shares of scheduled work as submitted in the fiscal year 1990 budget, unless otherwise indicated.

[b]The total of the federal and nonfederal shares of scheduled work as submitted in the fiscal year 1989 budget.

[c]The total of the federal and nonfederal shares of scheduled work as submitted in the fiscal year 1987 budget.

[d]Preliminary estimate for the North Coast Harbor and Pier 34.

[e]The total of the federal and nonfederal shares of scheduled work as contained in the cost-sharing agreement between the Corps and the nonfederal interest.

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